



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Draft

Date Introduced:	02/23/07	Bill No:	SB 950
Tax:	Cigarette and Tobacco Products Licensing	Author:	Corbett
Related Bills:			

This analysis will only address the bill's provisions that impact the Board.

BILL SUMMARY

This bill would require every manufacturer and importer of cigarettes or tobacco products to provide the Board of Equalization (Board) and the State Department of Public Health an annual report of added ingredients and nicotine yield ratings for each brand of products sold.

ANALYSIS

CURRENT LAW

Under current law, Section 22979 of the Business and Professions Code requires every manufacturer and every importer of cigarettes to obtain and maintain a license to engage in the sale of cigarettes. In order to be eligible for obtaining and maintaining a license, a manufacturer or importer of cigarettes must:

- Submit to the Board a list of all brand families that they manufacture or import.
- Update the list of all brand families that they manufacture or import whenever a new or additional brand is manufactured or imported, or a listed brand is no longer manufactured or imported.
- Consent to jurisdiction of the California courts for the purpose of enforcement of this division and appoint a registered agent for service of process in this state and identify the registered agent to the Board.

Furthermore, in order for a manufacturer or importer of cigarettes to be eligible for obtaining and maintaining a license under the Cigarette and Tobacco Products Licensing Act of 2003 (Licensing Act), a manufacturer or importer that is a "tobacco product manufacturer" as defined in Health and Safety Code Section 104556(i) must also certify to the Board that it is a "participating manufacturer" as defined in subsection II(jj) of the "Master Settlement Agreement," or is in full compliance with the model statute,¹ and submit to the Board a list of all brand families that fit under the category applicable to the manufacturer or importer, as specified.

Section 22979.7 provides that in addition to any other civil or criminal penalty, upon a finding that a manufacturer or importer has violated any provision of the Licensing Act, the Board may take the following actions:

- In the case of the first offense, the Board may revoke or suspend the license or licenses of the manufacturer or importer, as specified.

¹ Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code.

- In the case of a second or any subsequent offense, in addition to a revocation or suspension, as authorized, the Board may impose a civil penalty in an amount not to exceed five thousand dollars (\$5,000).

PROPOSED LAW

This bill would add Section 22979.55 to the Business and Professions Code to require each manufacturer and each importer of cigarettes and tobacco products to provide the Board and the State Department of Public Health with an annual report, in a form and at a time specified by the Board, that sets forth for each brand of product sold, both of the following:

- The identity of any added ingredient in descending order according to weight, measure, or numerical count other than added water, tobacco, reconstituted tobacco sheet made wholly of tobacco, or any ingredient that has been approved by the federal Food and Drug Administration as safe, or generally recognized as safe, when burned or inhaled.
- The nicotine yield ratings. The ratings would be based upon standards established by the State Department of Public Health to accurately predict nicotine intake for average consumers.

The bill would become effective on January 1, 2008.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to help consumers make more informed decisions about smoking and quitting by providing the public with information about the increasing amount of nicotine in cigarettes and tobacco products.
2. **Would the reported information be used by the Board?** The information this measure would require to be reported would not be used for purposes of the Board's administration and collection of the cigarette and tobacco products tax. As such, it is suggested that the bill be amended to require the information be provided only to the State Department of Public Health since the information isn't relevant to the Board. It is also suggested that the form of the report and due date be dictated by the State Department of Public Health rather than the Board.
3. **Is this the correct funding source for this proposed reporting requirement?** In 2003, AB 71 (Ch. 890) enacted the Licensing Act which is intended to help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products. Among other things, the Licensing Act created the Cigarette and Tobacco Products Compliance Fund (Fund) into which all of the Licensing Act moneys from license fees, penalties and fines are deposited. All moneys in the Fund are available for expenditure, upon appropriation by the Legislature, solely for the purpose of implementing, enforcing, and administering the Licensing Act.

However, it should be noted that the Board's funding for administering and enforcing the Licensing Act recently shifted to the cigarette and tobacco products tax funds (General Fund, Breast Cancer Fund, Cigarette and Tobacco Products Surtax Fund, and the California Children and Families First Trust Fund). It was known at the time AB 71 was being developed and moving through the Legislature that the Licensing Act revenues would not be sufficient to provide long-term funding for Licensing Act,

and that once the Fund was depleted the Board's funding would shift to the cigarette and tobacco products tax funds. As such, any administrative costs incurred by the Board, State Department of Public Health or Attorney General related to this provision would be reimbursed by the cigarette tax funds (less any license fees, fines and penalties deposited in the Fund).

Lastly, a violation of the reporting requirements proposed by this bill would subject the manufacturer or importer to a suspension or revocation of their license, and in the case of a second violation, a penalty of up to five thousand dollars (\$5,000).

COST ESTIMATE

A detailed cost estimate is pending. However, the Board would incur non-absorbable costs related to the notifying manufacturers and importers of their reporting requirements, developing forms and publications, and processing the reports.

REVENUE ESTIMATE

This provision would not affect the state's revenues.

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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.